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Bristol Hospital EMS, LLC and International Association of EMTs and Paramedics SEIU/NAGE.
Cases 34–CA–12481 and 34–RC–2313

August 24, 2010

DECISION, CERTIFICATION OF
REPRESENTATIVE, AND NOTICE TO SHOW
CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS SHCAUMBER
AND HAYES

On December 24, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 116.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the Acting General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the Board issued an order setting aside the decision and order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.²

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's December 24, 2009 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceed-

ing. The prior proceeding, however, was also a two-member decision and we do not give it preclusive effect.

We have considered the postelection representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and briefs, and has adopted the Regional Director's findings and recommendations to the extent and for the reasons stated in the July 23, 2009 Decision and Certification of Representative, which is incorporated herein by reference.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Association of EMTs and Paramedics, NAGE/SEIU Local 5000, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time EMT-P's, EMT-I's, EMT-Basics, Secretary III, and Wheel Chair Van Attendants, employed by the Employer at its 371 Terryville Avenue, Bristol, Connecticut facility; but excluding other office clerical employees, the EMS Education Coordinator, EMS Supervisors, the BLS instructor, all other employees, and all guards, professional employees and supervisors as defined in the Act.

Notice to Show Cause

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The Acting General Counsel is granted leave to amend the complaint on or before September 3, 2010 to conform with the current state of the evidence;

2. The Respondent's answer to the amended complaint is due on or before September 17, 2010; and

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case prior to the issuance of this decision.

3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before October 8, 2010 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the Acting General Counsel's motion for summary judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. August 24, 2010

Wilma B. Liebman,	Chairman
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Peter C. Schaumber,	Member
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Brian E. Hayes,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD